DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0234
Sales and Use Tax
For the Years 1997-1998

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ISSUE

I. Sales and Use Tax- Imposition of Sales Tax

Authority: IC 6-2.5-2-1, IC 6-8.1-5-1 (b),

The taxpayer protests the imposition of the sales tax.

II. Sales and Use Tax-Imposition of Use Tax

Authority: IC 6-2.5-3-2, IC 6-8.1-5-1 (b),

The taxpayer protests the imposition of tax.

STATEMENT OF FACTS

The taxpayer is a restaurant and banquet facility. During 1998, the taxpayer was open for ten months and filed returns for five months. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested this assessment. In response to the protest, a hearing was scheduled. The taxpayer failed to appear or make any other contact with the department.. As a result, this Letter of Finding is based upon the information in the file.

I. Sales and Use Tax- Imposition of Sales Tax

DISCUSSION

Indiana imposes a sales tax on retail transactions made in Indiana. IC 6-2.5-2-1. All assessments made by the department are presumed to be correct. Taxpayers bear the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b).

The department determined the taxpayer's 1997 sales tax liability by subtracting the total sales as reported from the recap of the taxpayer's returns from the total sales for the year from profit and loss statements. Sales tax was applied to the remainder.

The taxpayer operated for ten months of 1998. The taxpayer reported and paid sales tax on ST-103's for five of the ten months of operation. The taxpayer reported an average of 26.11% of taxable sales as computed by the department. Sales tax was included in total sales and was deducted prior to arriving at taxable sales per audit. The department recapped the taxpayer's daily sales cash register tapes to arrive at total sales. The taxpayer stated that the facility was open seven days a week for approximately fifteen hours per day. The taxpayer's records did not disclose any exempt sales. A review of the cash register tapes revealed some days of various months were missing. To arrive at the missing days, the totals of all days with cash register tapes were totaled and divided by the number of days with tapes for the month in question. The average daily sales for a month with missing days were multiplied by the number of missing days to arrive at adjusted taxable sales by combining estimated days and days with actual receipts. Sales tax was applied to the total sales computed by the department.

Although given ample opportunity, the taxpayer did not present any documentation to indicate that the department improperly imposed the sales tax or that the department's calculations of the sales tax due were incorrect.

FINDING

The taxpayer's protest is denied.

II. Sales and Use Tax-Imposition of Use Tax

DISCUSSION

The use tax is imposed on personal property purchased in a retail transaction and used in Indiana when no sales tax has been paid. IC 6-2.5-3-2. All assessments made by the department are presumed to be correct. Taxpayers bear the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b).

The department examined the taxpayer's purchase records for 1998. The department made a listing of purchases that the taxpayer used in Indiana and on which no sales tax wax paid. None of the listed purchases qualified for exemption. Use tax was imposed on the taxpayer's use of these items.

The taxpayer did not present the department with any purchase records for 1997. Therefore, the department calculated a ratio of the 1998 total purchases to the 1998 total sales. This ratio was used to determine an estimate of the total purchases for 1997. The department then applied the percentage of 1998 sales that were subject to the imposition of use tax to the estimate of the 1997 total purchases to determine the taxpayer's 1997 use tax liability.

Although given ample opportunity, the taxpayer did not present any documentation to indicate that the department improperly imposed the use tax or that the department's calculations of the use tax due were incorrect.

FINDING

The taxpayer's protest is denied.

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